IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JAMES RICHARD SATTERFIELD, Appellant.	2 CA-CR 2009-0127 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200800901

Honorable Bradley M. Soos, Judge Pro Tempore

AFFIRMED IN PART; VACATED IN PART

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E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial, James Satterfield was convicted of two counts of armed robbery. The court sentenced him to concurrent, aggravated, enhanced terms of twenty-

eight years' imprisonment on each count. On appeal, Satterfield argues "the trial court exceeded its authority in imposing an aggravated sentence based on aggravating factors, which were not specifically found by a jury." Finding no error on this ground, we affirm the sentence in part. However, we vacate the $1,000 "prosecution fee" imposed as part of Satterfield's sentence.

BACKGROUND

¶2 "We view the facts in the light most favorable to sustaining the convictions." *State v. Robles*, 213 Ariz. 268, ¶ 2, 141 P.3d 748, 750 (App. 2006). On April 9, 2008, James Satterfield and an accomplice brought a maroon sedan to a stop alongside two young women sitting near a fast-food restaurant and instructed the women at gunpoint to throw their purses into the sedan. A Pinal County grand jury indicted Satterfield on two counts of armed robbery in violation of A.R.S. § 13-1904(A)(1), and a jury found him guilty of both counts.

¶3 At sentencing, the trial court found several aggravating factors, including the fact that Satterfield had four prior felony convictions. The court imposed an enhanced, aggravated sentence on each count. This appeal followed.

DISCUSSION

¶4 Satterfield now challenges his aggravated sentences under *Blakely v. Washington*, 542 U.S. 296 (2004), arguing that the finding of "one aggravating factor [i]s not sufficient" for the imposition of a statutory maximum sentence and that the trial judge exceeded his authority by relying in aggravation on factors not proven to a jury. Because he did not raise this issue below, Satterfield has forfeited all but fundamental error

review. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Before this court will grant relief for fundamental error, a defendant must demonstrate that error occurred, that it was fundamental, and that it resulted in prejudice. *Id.* ¶¶ 19-20. An illegal sentence will generally constitute fundamental error. *See State v. Payne*, 561 Ariz. Adv. Rep. 11, ¶ 14 (Ct. App. July 24, 2009).

¶5 The Sixth Amendment to the United States Constitution guarantees every criminal defendant the right to demand "a jury find him guilty of all the elements of the crime with which he is charged." *United States v. Booker*, 543 U.S. 220, 230 (2005). This right is not confined to the determination of guilt or innocence. *Id.* at 232. The Sixth Amendment also applies throughout the sentencing process and guarantees to a defendant the "right to have the jury find the existence of 'any particular fact' that the law makes essential to his punishment." *Id.*, *quoting Blakely*, 542 U.S. at 301. Under Arizona law, the presumptive sentence is the maximum sentence that may be imposed without any aggravating factors being found. *State v. Martinez*, 210 Ariz. 578, ¶ 17, 115 P.3d 618, 623 (2005).

¶6 But, once the court has found a single aggravating factor in compliance with *Blakely*, it may find and consider other aggravating factors to determine the appropriate sentence within the aggravated range. *See Martinez*, 210 Ariz. 578, ¶ 21, 115 P.3d at 624. As our supreme court observed in *Martinez*, "the Sixth Amendment does not remove from a trial judge the traditional sentencing discretion afforded the judge, so long as the judge exercises that discretion within a sentencing range established by the fact of a prior conviction, facts found by a jury, or facts admitted by a defendant." *Id.* ¶ 16.

¶7 Here, the trial court found one aggravating factor—that Satterfield previously had been convicted of four felonies—in compliance with Sixth Amendment standards. *See Blakely*, 542 U.S. at 301 ("'Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.'"), *quoting Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). It therefore did not err, fundamentally or otherwise, when it found additional aggravating factors by the more relaxed standards set forth under Arizona statute. *See Martinez*, 210 Ariz. 578, ¶ 26, 115 P.3d at 625; *see also* 2006 Ariz. Sess. Laws, ch. 148, § 1, former A.R.S. § 13-702(D) ("If the trier of fact finds at least one aggravating circumstance, the trial court may find by a preponderance of the evidence additional aggravating circumstances.").

¶8 We affirm Satterfield's sentences in part. However, for the reasons specified in *Payne*, 561 Ariz. Adv. Rep. 11, ¶ 49, we vacate the $1,000 "prosecution fee" illegally imposed by the trial court, which is referred to as "Attorney Prosecution Cost Recovery" in the court's sentencing minute entry.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge